

1                   **LOCAL GOVERNMENT POST-EMPLOYMENT**  
2                   **BENEFIT TRUST FUNDS AMENDMENTS**

3                                   2007 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Keith Grover**

6                                   Senate Sponsor: Margaret Dayton

---

---

8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the State Money Management Act by amending provisions related to  
11                   local government other post-employment benefits trust funds.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ provides that local government other post-employment benefits trust funds are  
15                   exempt from the requirements to invest monies in certain assets;
- 16                   ▶ defines certain terms;
- 17                   ▶ requires all local government other post-employment benefits trust fund monies in  
18                   the custody of a public treasurer to be established in a separate trust fund;
- 19                   ▶ requires monies in a local government OPEB trust fund to be deposited or invested  
20                   in certain types of assets that meet certain criteria;
- 21                   ▶ provides that the state treasurer may develop and offer a variety of asset allocation  
22                   options for monies in an OPEB trust fund and review the options for efficiency as  
23                   needed;
- 24                   ▶ allows the state treasurer to charge an administrative fee for cost incurred in the  
25                   management of local government OPEB funds within an asset allocation option;
- 26                   and
- 27                   ▶ makes technical changes.

28                   **Monies Appropriated in this Bill:**

29                   None

30 **Other Special Clauses:**

31 This bill coordinates with H.B. 7, Post-Retirement Benefits Trust Fund, by inserting  
32 new substantive language.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **51-7-3**, as last amended by Chapter 178, Laws of Utah 2005

36 **51-7-11**, as last amended by Chapter 277, Laws of Utah 2006

37 ENACTS:

38 **51-7-12.2**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **51-7-3** is amended to read:

42 **51-7-3. Definitions.**

43 As used in this chapter:

44 (1) "Agent" means "agent" as defined in Section 61-1-13.

45 (2) "Certified dealer" means:

46 (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York

47 who is certified by the director as having met the applicable criteria of council rule; or

48 (b) a broker dealer who:

49 (i) has and maintains an office and a resident registered principal in the state;

50 (ii) meets the capital requirements established by council rules;

51 (iii) meets the requirements for good standing established by council rule; and

52 (iv) is certified by the director as meeting quality criteria established by council rule.

53 (3) "Certified investment adviser" means a federal covered adviser, as defined in

54 Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by

55 the director as having met the applicable criteria of council rule.

56 (4) "Commissioner" means the commissioner of financial institutions.

57 (5) "Council" means the State Money Management Council created by Section

58 51-7-16.

59 (6) "Director" means the director of the Utah State Division of Securities of the  
60 Department of Commerce.

61 (7) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind  
62 donated to a higher education institution from any source.

63 (b) "Endowment funds" does not mean monies used for the general operation of a  
64 higher education institution that are received by the higher education institution from:

65 (i) state appropriations;

66 (ii) federal contracts;

67 (iii) federal grants;

68 (iv) private research grants; and

69 (v) tuition and fees collected from students.

70 (8) "First tier commercial paper" means commercial paper rated by at least two  
71 nationally recognized statistical rating organizations in the highest short-term rating category.

72 (9) "Funds functioning as endowments" means funds, regardless of source, whose  
73 corpus is intended to be held in perpetuity by formal institutional designation according to the  
74 institution's policy for designating those funds.

75 (10) "GASB" or "Governmental Accounting Standards Board" means the  
76 Governmental Accounting Standards Board that is responsible for accounting standards used  
77 by public entities.

78 [~~(10)~~] (11) "Hard put" means an unconditional sell-back provision or a redemption  
79 provision applicable at issue to a note or bond, allowing holders to sell their holdings back to  
80 the issuer or to an equal or higher-rated third party provider at specific intervals and specific  
81 prices determined at the time of issuance.

82 [~~(11)~~] (12) "Higher education institution" means the institutions specified in Section  
83 53B-1-102.

84 [~~(12)~~] (13) "Investment adviser representative" means "investment adviser  
85 representative" as defined in Section 61-1-13.

86           ~~[(13)]~~ (14) (a) "Investment agreement" means any written agreement that has  
87 specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated  
88 interest rate.

89           (b) "Investment agreement" includes any agreement to supply investments on one or  
90 more future dates.

91           (15) "Local government" means a county, municipality, school district, special district,  
92 or any other political subdivision of the state.

93           ~~[(14)]~~ (16) "Market value" means market value as defined in the Master Repurchase  
94 Agreement.

95           ~~[(15)]~~ (17) "Master Repurchase Agreement" means the current standard Master  
96 Repurchase Agreement approved by the Public Securities Association or by any successor  
97 organization.

98           ~~[(16)]~~ (18) "Maximum amount" means, with respect to qualified depositories, the total  
99 amount of:

100           (a) deposits in excess of the federal deposit insurance limit; and

101           (b) nonqualifying repurchase agreements.

102           ~~[(17)]~~ (19) "Money market mutual fund" means an open-end managed investment  
103 fund:

104           (a) that complies with the diversification, quality, and maturity requirements of Rule  
105 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money  
106 market mutual funds; and

107           (b) that assesses no sales load on the purchase of shares and no contingent deferred  
108 sales charge or other similar charges, however designated.

109           ~~[(18)]~~ (20) "Nationally recognized statistical rating organization" means an  
110 organization that has been designated as a nationally recognized statistical rating organization  
111 by the Securities and Exchange Commission's Division of Market Regulation.

112           ~~[(19)]~~ (21) "Nonqualifying repurchase agreement" means a repurchase agreement  
113 evidencing indebtedness of a qualified depository arising from the transfer of obligations of the

114 United States Treasury or other authorized investments to public treasurers that is:

115 (a) evidenced by a safekeeping receipt issued by the qualified depository;

116 (b) included in the depository's maximum amount of public funds; and

117 (c) valued and maintained at market value plus an appropriate margin collateral

118 requirement based upon the term of the agreement and the type of securities acquired.

119 [~~(20)~~] (22) "Operating funds" means current balances and other funds that are to be  
120 disbursed for operation of the state government or any of its boards, commissions, institutions,  
121 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school  
122 district, political subdivision, or other public body.

123 [~~(21)~~] (23) "Permanent funds" means funds whose principal may not be expended, the  
124 earnings from which are to be used for purposes designated by law.

125 [~~(22)~~] (24) "Permitted depository" means any out-of-state financial institution that  
126 meets quality criteria established by rule of the council.

127 [~~(23)~~] (25) "Public funds" means monies, funds, and accounts, regardless of the source  
128 from which the monies, funds, and accounts are derived, that are owned, held, or administered  
129 by the state or any of its boards, commissions, institutions, departments, divisions, agencies,  
130 bureaus, laboratories, or other similar instrumentalities, or any county, city, school district,  
131 political subdivision, or other public body.

132 [~~(24)~~] (26) (a) "Public monies" means "public funds."

133 (b) "Public monies," as used in Article VII, Sec. 15, Utah Constitution, means the same  
134 as "state funds."

135 [~~(25)~~] (27) "Public treasurer" includes the state treasurer and the official of any state  
136 board, commission, institution, department, division, agency, or other similar instrumentality,  
137 or of any county, city, school district, political subdivision, or other public body who has the  
138 responsibility for the safekeeping and investment of any public funds.

139 [~~(26)~~] (28) "Qualified depository" means a Utah depository institution or an  
140 out-of-state depository institution, as those terms are defined in Section 7-1-103 that is  
141 authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19,

142 Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are  
143 insured by an agency of the federal government and that has been certified by the commissioner  
144 of financial institutions as having met the requirements established under this chapter and the  
145 rules of the council to be eligible to receive deposits of public funds.

146 ~~[(27)]~~ (29) "Qualifying repurchase agreement" means a repurchase agreement  
147 evidencing indebtedness of a financial institution or government securities dealer acting as  
148 principal arising from the transfer of obligations of the United States Treasury or other  
149 authorized investments to public treasurers only if purchased securities are:

150 (a) delivered to the public treasurer's safekeeping agent or custodian as contemplated  
151 by Section 7 of the Master Repurchase Agreement; and

152 (b) valued and maintained at market value plus an appropriate margin collateral  
153 requirement based upon the term of the agreement and the type of securities acquired.

154 ~~[(28)]~~ (30) "Securities division" means Utah's Division of Securities created within the  
155 Department of Commerce by Section 13-1-2.

156 ~~[(29)]~~ (31) "State funds" means:

157 (a) public monies raised by operation of law for the support and operation of the state  
158 government; and

159 (b) all other monies, funds, and accounts, regardless of the source from which the  
160 monies, funds, or accounts are derived, that are owned, held, or administered by the state or any  
161 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,  
162 or other similar instrumentalities.

163 Section 2. Section **51-7-11** is amended to read:

164 **51-7-11. Authorized deposits or investments of public funds.**

165 (1) (a) Except as provided in Subsection (1)(b), a public treasurer may conduct  
166 investment transactions only through qualified depositories, certified dealers, or directly with  
167 issuers of the investment securities.

168 (b) A public treasurer may, in furtherance of his duties, designate a certified investment  
169 adviser to make trades on behalf of the public treasurer.

170           (2) The remaining term to maturity of the investment may not exceed the period of  
171 availability of the funds to be invested.

172           (3) Except as provided in Subsection (4), all public funds may be deposited or invested  
173 only in the following assets that meet the criteria of Section 51-7-17:

174           (a) negotiable or nonnegotiable deposits of qualified depositories;

175           (b) qualifying or nonqualifying repurchase agreements and reverse repurchase  
176 agreements with qualified depositories using collateral consisting of:

177           (i) Government National Mortgage Association mortgage pools;

178           (ii) Federal Home Loan Mortgage Corporation mortgage pools;

179           (iii) Federal National Mortgage Corporation mortgage pools;

180           (iv) Small Business Administration loan pools;

181           (v) Federal Agriculture Mortgage Corporation pools; or

182           (vi) other investments authorized by this section;

183           (c) qualifying repurchase agreements and reverse repurchase agreements with certified  
184 dealers, permitted depositories, or qualified depositories using collateral consisting of:

185           (i) Government National Mortgage Association mortgage pools;

186           (ii) Federal Home Loan Mortgage Corporation mortgage pools;

187           (iii) Federal National Mortgage Corporation mortgage pools;

188           (iv) Small Business Administration loan pools; or

189           (v) other investments authorized by this section;

190           (d) commercial paper that is classified as "first tier" by two nationally recognized  
191 statistical rating organizations, one of which must be Moody's Investors Service or Standard  
192 and Poor's, which has a remaining term to maturity of 270 days or less;

193           (e) bankers' acceptances that:

194           (i) are eligible for discount at a Federal Reserve bank; and

195           (ii) have a remaining term to maturity of 270 days or less;

196           (f) fixed rate negotiable deposits issued by a permitted depository that have a  
197 remaining term to maturity of 365 days or less;

198 (g) obligations of the United States Treasury, including United States Treasury bills,  
199 United States Treasury notes, and United States Treasury bonds;

200 (h) obligations other than mortgage pools and other mortgage derivative products  
201 issued by, or fully guaranteed as to principal and interest by, the following agencies or  
202 instrumentalities of the United States in which a market is made by a primary reporting  
203 government securities dealer:

204 (i) Federal Farm Credit banks;

205 (ii) Federal Home Loan banks;

206 (iii) Federal National Mortgage Association;

207 (iv) Student Loan Marketing Association;

208 (v) Federal Home Loan Mortgage Corporation;

209 (vi) Federal Agriculture Mortgage Corporation; and

210 (vii) Tennessee Valley Authority;

211 (i) fixed rate corporate obligations that:

212 (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally  
213 recognized statistical rating organizations, one of which must be by Moody's Investors Service  
214 or Standard and Poor's;

215 (ii) are publicly traded; and

216 (iii) have a remaining term to final maturity of 365 days or less or is subject to a hard  
217 put at par value or better, within 365 days;

218 (j) tax anticipation notes and general obligation bonds of the state or of any county,  
219 incorporated city or town, school district, or other political subdivision of this state, including  
220 bonds offered on a when-issued basis without regard to the limitation in Subsection (7);

221 (k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or  
222 town, school district, or other political subdivision of the state that are payable from  
223 assessments or from revenues or earnings specifically pledged for payment of the principal and  
224 interest on these obligations, including bonds offered on a when-issued basis without regard to  
225 the limitation in Subsection (7);

- 226 (l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;
- 227 (m) variable rate negotiable deposits that:
  - 228 (i) are issued by a qualified depository or a permitted depository;
  - 229 (ii) are repriced at least semiannually; and
  - 230 (iii) have a remaining term to final maturity not to exceed two years;
- 231 (n) variable rate securities that:
  - 232 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
  - 233 recognized statistical rating organizations, one of which must be by Moody's Investors Service
  - 234 or Standard and Poor's;
  - 235 (B) are publicly traded;
  - 236 (C) are repriced at least semiannually; and
  - 237 (D) have a remaining term to final maturity not to exceed two years or are subject to a
  - 238 hard put at par value or better, within 365 days; and
  - 239 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or
  - 240 any security making unscheduled periodic principal payments other than optional redemptions.
- 241 (4) The following public funds are exempt from the requirements of Subsection (3):
  - 242 (a) the Employers' Reinsurance Fund created in Section 34A-2-702; [~~and~~]
  - 243 (b) the Uninsured Employers' Fund created in Section 34A-2-704[-]; and
  - 244 (c) a local government other post-employment benefits trust fund under Section
  - 245 51-7-12.2.
- 246 (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or
- 247 nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be
- 248 calculated on the basis of the actual number of days divided by 360 days.
- 249 (6) A public treasurer may maintain fully insured deposits in demand accounts in a
- 250 federally insured nonqualified depository only if a qualified depository is not reasonably
- 251 convenient to the entity's geographic location.
- 252 (7) The public treasurer shall ensure that all purchases and sales of securities are settled
- 253 within 15 days of the trade date.

254 Section 3. Section **51-7-12.2** is enacted to read:

255 **51-7-12.2. Definitions -- Local government other post-employment benefits trust**  
256 **fund -- Investments -- State treasurer duties.**

257 (1) As used in this section:

258 (a) "Local Government OPEB Trust Fund" or "Local Government Other  
259 Post-Employment Benefits Trust Fund" means monies set aside by a local government to fund  
260 future payments of benefits, other than pensions, to a former employee who is qualified for the  
261 benefits.

262 (b) "Local Government OPEB Trust Fund" does not include monies for deposit in the  
263 Utah State Retirement Investment Fund created under Section 49-11-301.

264 (2) All local government OPEB trust fund monies in the custody of a local government  
265 treasurer shall be established in a separate trust fund in accordance with standards established  
266 by the Governmental Accounting Standards Board.

267 (3) Monies in a local government OPEB trust fund may be deposited or invested only  
268 in the following assets that meet the criteria of Section 51-7-17:

269 (a) a deposit or investment authorized under Section 51-7-11;

270 (b) indexed funds of an open-end diversified management investment company  
271 established under the Investment Companies Act of 1940; or

272 (c) indexed funds that are administered by the state treasurer in accordance with  
273 Subsection (4).

274 (4) The state treasurer may:

275 (a) develop and offer a variety of asset allocation options for monies in a local  
276 government OPEB trust fund;

277 (b) review for efficiency, the asset allocation options offered under Subsection (4)(a) as  
278 needed; and

279 (c) charge an administrative fee of not more than .005 percent per month of the assets  
280 managed for cost incurred in the management of funds within an asset allocation option.

281 Section 4. **Coordinating H.B. 337 with H.B. 7 -- Modifying substantive language.**

282           If this H.B. 337 and H.B. 7, Post-Retirement Benefits Trust Fund, both pass, it is the  
283 intent of the Legislature that the Office of Legislative Research and General Counsel, in  
284 preparing the Utah Code database for publication, modify Subsection 51-7-12.2(1)(b) to read:  
285           "(b) "Local Government OPEB Trust Fund" does not include monies for deposit in the  
286 Utah State Retirement Investment Fund created under Section 49-11-301, or monies for deposit  
287 in the Post-Retirement Benefits Trust Fund created under Section 67-19d-201."